REVENUE (19~~5~~ 48) Department.

MS. SERIES.

G.O. No. ~~1388~~ 1456

Dated 21~~s~~t June 1948.

[Despatch Abstract.]

TAX--Madras General Sales Tax Act. 1939--Section 16-A--Applicabilit prosecutions pending on 1st January 1948--Position explained to the of Revenue.

REVENUE DEPARTMENT.

From the Board of Revenue, Reference T.No.2149/48-2 dated/28.4.48.

G.O.Ms.No.1456 dated/21.6.48.

ORDER:

In its reference read above, the Board of Revenue, has raised the question whether the provisions of Section 16-A of the Madras General Sales Tax Act, 1939 are applicable to the prosectution cases pending on 1.1.48. The Government have examined the question and they are advised that the position is as follows:

"New section 16A was inserted in the Madras General Sales Tax Act 1939, in order to prevent the validity of the assessment of any tax or of the levy of any fee or other amount made under the Act or the liability of any person to pay it, from being questioned in a criminal court. The right of questioning the validity of the assessment, etc. which the accused had cannot be regarded merely as a matter of procedure and it should be treated as being in the nature of a substantive right. In the absence of an express provision in Madras Act XXV of 1947 (which inserted new section 16A) applying section 16A to prosections pending on thedate on which the amending Act came into force, and having regard to the fact that the question arises in criminal prosecutions, the ordinary rule of law, viz. that liability should be decided with reference to the state of the law on the date on which the offence is alleged to have been committed and not that on the date of the judgment or order, should be held to apply." In this view, it does not appear that new section 16A can be applied to prosectutions pending on 1-1-48.

2. The Government consider that there is no use in obtaining the views of the Advocate General in thematter since the courts would not be bound by his views.

(By Order of His Excellency the Governor)

(Sd.) X X
SECRETARY TO GOVERNMENT.

To the Board of Revenue.

/True Copy/ S. Jagannathan
OFFICE ASSISTANT 28/5
MADRAS RECORD OFFICE.

C.N.V.
19.12.

REVENUE DEPARTMENT N.

Tax--Madras General Sales Tax Act, 1939-Section 16-A--Applicability to prosecutions pending on 1.1.48. Fan The Board of Revenue Reference RK I. 2149/48-2 dated/28.4.48. From the Board of Revenue reference I 2149/48--dated/13.5.48.

To Ds.

Please see the Board's reference and its enclosures at pages 1-3cf. The Board has submitted the case and requests that the opinion of the Advocate General in reference: to the applicability, of Section 16-A to prosecXution cases pending on 1-1-48 may be obtained.

2. Under the Madras several Sales Tax Act, 1939 as it stood prior to 1.1.48, the failure or evasion to pay a tax due under the Act was an offence and this bad led to arguments in the Criminal court that a tax is not due even though it had been duly assessed on the offender. It was considered that a Criminal court is obviously not the proper form/such arguments and it was accordingly proposed to bring out the intention KIRXAI clearly by making the failure or evasion to pay a tax duly assessed on the offender an offence. This change was effected by the recent amendment Act. The amendment Act contains also a specific provision onstring the jurisdiction of criminal courts. The point raised by the Board is whether the provisions of Section 16-A of the Madras General Act, 1939 which were intoduced by the recent amendment Act which came into force on 1.1.48 will apply to the proscutions pending on that date.

3. The remarks of Legal may be obtained on this point in the first instance.

Revenue W.O.No.
26056 N
26.5.48.

(Sd.)

Legal.

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LEGAL DEPARTMENT.

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There is no use of obtaining the views of the Advocate-General since the courts would not be bound by his views. If Government desire to obtain a ruling that the courts are bound to follow, they must wait for an acquittal and then go up to the High Court.

(Sd.)

Revenue Department.
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C.N.V.

OFFICE ASSISTANT
MADRAS RECORD OFFICE.